

Grendel

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed:
August 26, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Rivercat Foods, Inc.
v.
Sacramento River Cats Baseball Club, LLC

Opposition No. 91150539
to application Serial No. 78975148
filed on March 29, 2001

On Motion for Reconsideration

Rivercat Foods, Inc., pro se.

Lori Krafte of Greenebaum, Doll & McDonald for Sacramento
River Cats Baseball Club, LLC.

Before Hairston, Chapman and Grendel, Administrative
Trademark Judges.

Grendel, Administrative Trademark Judge:

Opposer has filed a motion for reconsideration of the
Board's May 24, 2005 decision dismissing its opposition to
registration of applicant's mark.¹ Familiarity with that

¹ Opposer's motion bears certificates of mailing and service dated June 17, 2005. However, the date stamp indicating receipt of the paper by the Board indicates that the paper was received on July 13, 2005, a date beyond the one-month deadline for filing a motion for reconsideration. See Trademark Rule 2.129(c), 37

decision is presumed. Applicant filed no response to opposer's motion.²

We hereby reconsider our finding, in the prior decision, that applicant's mark and opposer's mark have different connotations and different overall commercial impressions, i.e., that applicant's mark would be perceived as the name of its baseball team. Instead, we now find that the marks have the same connotation and commercial impression, and that the marks are similar, for purposes of the first *du Pont* evidentiary factor.

Opposer also requests that we reconsider our decision to the extent that it suggests that we failed to consider all normal trade channels for the parties' respective goods, and to the extent that we considered the only relevant trade channel at issue to be that of applicant's baseball game events. We hereby clarify our prior decision as follows.

We presume that opposer's food items and applicant's clothing items are marketed in all of the normal channels of trade for such products, and not just at applicant's baseball game events. However, opposer presented no evidence at trial showing what the normal trade channels for

C.F.R. 2.129(c). In the absence of any further evidence to the contrary, however, we will presume that the date set forth on the certificate of mailing is accurate, and that the motion for reconsideration therefore was timely filed and served. Trademark Rule 2.197, 37 C.F.R. §2.197.

the respective goods are, much less that those trade channels overlap in any way that would lead purchasers to be confused as to the sources of the respective goods. In the absence of any such evidence regarding trade channels, our failure to discuss trade channels other than applicant's baseball game events (which is the only trade channel as to which there was evidence in the record) was not error.

In summary, we grant opposer's motion for reconsideration to the extent that we hereby clarify our previous decision in the manner discussed above. Even with such reconsideration, however, we remain of the opinion that opposer has failed to carry its burden of establishing, by a preponderance of the evidence, that a likelihood of confusion exists.

Decision on Reconsideration: The Board's prior decision is clarified as discussed above. The dismissal of the opposition stands.³

² A response to a motion for reconsideration is not required. See TBMP §543 (2d ed. rev. 2004).

³ Opposer's time for appeal of the Board's decision dismissing the opposition runs from the date of this decision on reconsideration. See Trademark Rule 2.145(d), 37 C.F.R. §2.145(d).